



CHAIRMAN

Federal Communications Commission

Washington, D.C.

October 2, 2003

02-278

The Honorable Jim Gerlach  
U.S. House of Representatives  
1541 Longworth House Office Building  
Washington, D C 20515

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Dear Congressman Gerlach:

Federal Communications Commission  
October 2, 2003

Thank you for your letter of September 17, 2003, regarding the Commission's recent amendment to its rules implementing the Telephone Consumer Protection Act of 1991 ("TCPA"). In your correspondence, you express concern about the Commission's decision requiring written consent before sending advertising faxes.

On September 18, 2002, the Commission released its *Notice of Proposed Rulemaking* ("NPRM") seeking comment on whether it should change its rules that restrict telemarketing calls and unsolicited fax advertisements, and if so, how. Specifically, the *NPRM* sought comment on the effectiveness of the TCPA's unsolicited facsimile advertisement rules, including the Commission's determination that a prior business relationship between a fax sender and recipient establishes the requisite consent to receive advertisements via fax. The Commission received over 6,000 comments from individuals, businesses, and state governments on the TCPA rules.

The record in this proceeding, along with our own enforcement experience, demonstrated that changes in the current rules are warranted, if consumers and businesses are to continue to receive the privacy protections contemplated by the TCPA. As explained in the Commission's *Report and Order* released on July 3, 2003, the record indicated that many consumers and businesses receive faxes they believe they have neither solicited nor given their permission to receive. Consumers emphasized that the burden of receiving hundreds of unsolicited faxes was not just limited to the cost of paper and toner, but includes the time spent reading and disposing of faxes, the time the machine is printing an advertisement and is not operational for other purposes, and the intrusiveness of faxes transmitted at inconvenient times, including in the middle of the night.

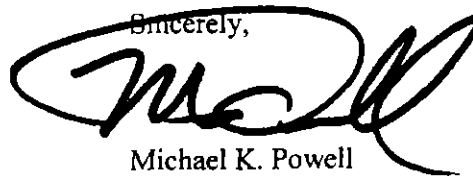
As we explained in the *Report and Order*, the legislative history of the TCPA indicates that one of Congress' primary concerns was to protect the public from bearing the costs of unwanted advertising. Therefore, Congress determined that companies that wish to fax unsolicited advertisements to customers must obtain their express permission to do so before transmitting any faxes to them. The amended rules require all entities that wish to transmit advertisements to a facsimile machine to obtain permission from the recipient in writing

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The Commission's amended facsimile advertising rules initially were scheduled to go into effect on August 25, 2003. However, as you are aware, based on additional comments received since the adoption of the *July Report and Order*, the Commission, on its own motion, determined to delay the effective date of some of the amended facsimile rules, including the elimination of the established business relationship exemption, until January 1, 2005. The comments filed after the release of the *Report and Order* indicate that many organizations may need additional time to secure this written permission from individuals and businesses to which they fax advertisements. This extension will allow senders of such advertisements additional time to obtain the necessary permission before the new rules become effective. In addition, as you note in your correspondence, it will allow the Commission the opportunity to consider any petitions for reconsideration and other filings that may be made on this issue. I am enclosing a copy of the Commission's *Order on Reconsideration*, released on August 18, 2003.

I appreciate your comments. We have placed a copy of your correspondence in the public record for this proceeding and will consider your views carefully, along with all of the comments and pleadings filed with the Commission. Please do not hesitate to contact me if you have further questions.

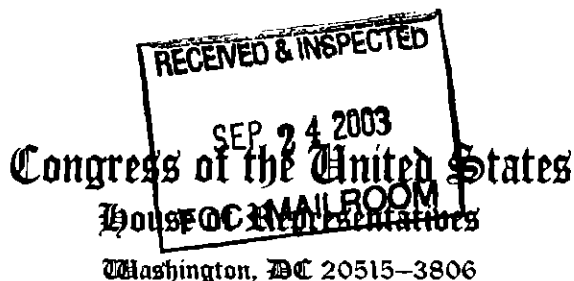
Sincerely,

A handwritten signature in black ink, appearing to read "M. Powell", with a large, stylized flourish extending from the end of the signature.

Michael K. Powell

Enclosure

JIM GERLACH  
6TH DISTRICT PENNSYLVANIA  
COMMITTEES  
TRANSPORTATION AND INFRASTRUCTURE  
SMALL BUSINESS



1541 LONGWORTH HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515  
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02-278  
ACB  
TCPA-Policy  
PV  
MKP  
2801

September 17, 2003

The Honorable Michael K. Powell  
Chairman  
Federal Communications Commission  
445 12th Street SW  
Washington, DC 20554

Dear Chairman Powell:

I am writing to express my strong support for the efforts of the business community in urging you to reconsider the elimination of the "established business relationship" exception in the Federal Communication Commission's (FCC) new fax communications rules.

A concerned constituent contacted me in late July regarding the Notice of Final Rule published in the Federal Register on July 25, 2003. In that Notice, your agency announced a change in prior policy which allowed unsolicited advertisements if the sender and recipient had a prior business relationship. Under the new rules, a sender may only fax materials advertising the commercial availability or quality of any property, goods, or services when they have previously secured a signed, written statement permitting such transmissions. Presumably as a response to the strong and swift reaction of the business community, the FCC granted a stay on August 18, 2003 which delayed the effective date of the new fax rules to January 1, 2005. The FCC granted the stay in order to allow businesses and other entities time to gather written consent and otherwise comply with the new rules. Further, the extension allows the FCC time to consider petitions for reconsideration on the matter.

I am greatly concerned about the effect these new rules will have on businesses and associations, including not-for-profit organizations, both in terms of the time-consuming administrative burden of obtaining written consent from existing customers or members and in terms of dissemination of relevant and valuable information. Often, this method of communication is the most efficient and effective way for small mom-and-pop businesses and not-for-profits to share information about their goods or services with their customers. While larger businesses often send glossy brochures or products and services lists, these smaller businesses work on a much more limited budget. At a time when small businesses are the strongest performers in our still-recovering economy, we should look for ways to ensure their continued viability and to shore up their performance, not make the cost of doing business greater.

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BERKS COUNTY  
501 NORTH PARK ROAD  
WYOMISSING, PA 19610  
(610) 376-7630  
FAX (610) 376-7633

DISTRICT OFFICES  
CHESTER COUNTY  
1230 POTTSTOWN PIKE, SUITE 4  
GLENMOORE, PA 19343  
(610) 458-8010  
FAX (610) 458-8393

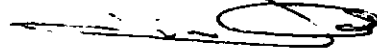
MONTGOMERY COUNTY  
580 MAIN STREET, SUITE 4  
TRAPPE, PA 19426  
(610) 409-2780  
FAX (610) 409-1988

In addition to the business sector, membership associations often use fax transmissions as an inexpensive and efficient way to communicate issues important to their members. These entities, too, are often on a limited budget - especially given the current economic downturn.

As the Small Business Administration Office of Advocacy stated, "the 'do-not-fax' provision has the potential of muzzling the voice of small business." The elimination of the "established business relationship" exception could prove to be more than a mere inconvenience to small businesses, but rather could be a fatal impediment to their continued viability. I therefore support the efforts of the Chamber of Commerce of the United States and its co-petitioners on their Petition for Reconsideration of Facsimile Advertisement Rules (CG Docket No. 02-278, September 25, 2003) and join the Small Business Administration's Office of Advocacy in its urging you to reconsider eliminating the "established business relationship" exception to the unsolicited fax rules.

With kind regards, I am

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Gerlach", is written over a horizontal line.

Jim Gerlach  
Member of Congress

JG:SW